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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

DALADIER ANDREW WOODS, *Defendant and Appellant,* *vs.* THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiff and Respondent.*	No. (Undocketed) Superior Court of the State of California for the County of Los Angeles Appellate Department, Case No. CR A 7977

JURISDICTIONAL STATEMENT

(Rule 13(2) and 15
Rules of The United States Supreme Court

(a) This is an appeal taken from the Order of the Appellate Department of the Superior Court, County of Los Angeles, State of California, affirming the Order made by the Municipal Court of the Culver City Judicial District, County of Los Angeles, State of California, granting to appellant probation after appellant had been found guilty following a trial by jury. The Order granting probation was made on April 3, 1968. The Order made

by the Appellate Department of the Superior Court of the County of Los Angeles affirming the judgment below was made on November 25, 1968. On December 11, 1968, the Appellate Department of the Superior Court of the State of California for the County of Los Angeles entered an Order Staying The Issuance Of The Remittitur and Judgment for a period of thirty days from December 11, 1968. On January 8, 1969, the Appellate Department of the Superior Court of the State of California for the County of Los Angeles made an Order further staying the issuance of the remittitur and judgment until January 20, 1969. There is no written opinion and, therefore, no official or unofficial reports of the decision rendered by the Appellate Department of the Superior Court of the State of California for the County of Los Angeles affirming the Order Granting Probation.[1]

(b) The jurisdiction of this Court is invoked on the grounds, *inter alia,* that the Appellate Department of the Superior Court of the State of California for the County of Los Angeles upheld California Penal Code section 270 against a claim of unconstitutionality under the federal Constitution. Other questions raised also invoke federal constitutional questions and invoke the jurisdiction of this Court (see *infra*):

(i) Appellant, DALADIER ANDREW WOODS, was charged in a complaint filed in the Municipal Court of the Culver City Judicial District, County of Los Angeles, State of California, with one count of violating California Penal Code section 270 (failure to provide).

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1 For the purpose of 28 U.S.C., sec. 1257(2), the Appellate Department of the Superior Court of the State of California is the "highest court of the state" Edwards v. California, 314 U.S. 160, 62 S.Ct. 164, 86 L.Ed. 119.

(ii) The judgment rendered by the Appellate Department of the Superior Court of the State of California for the County of Los Angeles (affirming the Order Granting Probation entered by the Municipal Court of the Culver City Judicial District, County of Los Angeles, State of California) was entered on November 25, 1968. The Notice of Appeal from said judgment was filed on December 10, 1968, in the Appellate Department of the Superior Court of the State of California for the County of Los Angeles.

(iii) Jurisdiction of this Court is conferred by Title 28, United States Code, section 1257(2).

(iv) For case authority conferring jurisdiction upon this Court, see:

(1) Appellate jurisdiction: *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67, 49 S.Ct. 61, 73 L.Ed. 184, 187; *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 60 S.Ct. 431, 84 L.Ed. 596, 127 A.L.R. 821; *Lambert v. California*, 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d 228.

(2) Generally as to subsidiary questions involving constitutional issues; *Scott v. Donald*, 165 U.S. 58, 170 S.Ct. 265, 41 L.Ed. 632.

(3) California Penal Code section 270, either as applied or on its face, is unconstitutional in violation of Amendment Fourteen to the United States Constitution in that:

(a) Said statute is so vague, indefinite and ambiguous that men of common and ordinary intelligence must differ as to the meaning of said statute, specifically as to what is meant by the term "necessary" as applied to food, shelter and clothing,

and the term "without lawful excuse" as used in combination with the requirement of "necessity." *Giaccio v. Pennsylvania,* 382 U.S. 399, 86 S.Ct. 518, 15 L.Ed.2d 447; *Connally v. General Construction Co.,* 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed.322; *In re Berry,* 68 A.C. 135, 65 Cal.Rptr. 273; *People v. Saad,* 105 Cal.App.2d 851, 234 P.2d 785; *People v. McCaughan,* 49 Cal.2d 409, 317 P.2d 974; *In re Newbern,* 53 Cal.2d 786, 3 Cal.Rptr. 364.

(b) Said statute provides that a presumption of wilfully failing to provide arises from the mere fact of failing to provide; consequently, there is no rational connection between the presumption and the facts upon which the presumption is sought to be based. *Tot v. United States,* 319 U.S. 463, 63 S.Ct. 1241, 87 L.Ed. 1519; *United States v. Romano,* 382 U.S. 3, 86 S.Ct. 279, 15 L.Ed.2d 210.

(c) That portion of said statute which provides: "The court, in determining the ability of the father to support his child, shall consider all income, including social insurance, benefits, and gifts . . . " indirectly and directly violates the privilege against self-incrimination (Fifth Amendment, United States Constitution) by permitting this information to be obtained from the defendant through the probation department. *Cf. Grosso v. United States,* 390 U.S. 62, 88 S.Ct. 709, 19 L.Ed.2d 906; *Haynes v. United States,* 390 U.S. 85, 88 S.Ct. 722, 19 L.Ed.2d 923, and *Marchetti v. United States,* 390 U.S. 39, 88 S.Ct. 697, 19 L.Ed.2d 889.

(d) Said statute, by sanctioning imprison-

ing a man for failing to provide support for a child born out of wedlock, of whom he is alleged to be the father, constitutes cruel and unusual punishment (Eighth Amendment, United States Constitution). *Louisiana v. Resweber,* 329 U.S. 459, 67 S.Ct. 374, 91 L.Ed. 422; *Robinson v. California,* 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758; *Casper v. Brittain,* 245 F.2d 92.

(e) Said statute does not contain the word "knowingly," *i.e.,* there is no mandatory provision for notice to the defendant that he may be violating the statute prior to arrest. *Lambert v. California, supra,* 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d 228.

(f) Said statute provides for imprisonment for debt (which is also a violation of the California Constitution, Article I, section 50). *Ex parte Trombley,* 31 Cal.2d 801, 193 P.2d 734; *People v. Sorensen,* 68 A.C. 285, 66 Cal.Rptr. 7.

(4) Appellant was denied the right to effective representation by counsel when the court, at the hearing on appellant's Motion For New Trial and/or Judgment Of Acquittal, inquired of appellant's counsel whether said counsel believed appellant's trial testimony. *Glasser v. United States,* 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680; *McConnell v. Rhay,* ___ U.S. ___, 89 S.Ct. ___, 21 L.Ed.2d 2; *Johnson v. Zerbst,* 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461; *People v. Davis,* 48 Cal.2d 241, 309 P.2d 1; *In re Smiley,* 66 Cal.2d 606, 58 Cal.Rptr. 571.

(5) A defendant is denied due process of law when, as in the instant case, evidence introduced against

him was insufficient as a matter of law to sustain the conviction. *Johnson v. Florida,* ___ U.S. ___, 88 S.Ct. ___, 20 L.Ed.2d 838; *Thompson v. Louisville,* 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654.

(a) The prosecution failed to establish two elements of the *corpus delecti* of the offense, to wit, (1) what constituted the necessities of life under the circumstances of this case, and (2) that appellant had the ability to pay more than he did in fact pay. *People v. Williams,* 27 Cal.2d 220, 163 P.2d 692; *Diamond v. Bent,* 157 Cal.App.2d Supp. 857, 320 P.2d 621; *People v. Alves,* 155 Cal.App.2d Supp. 870, 320 P.2d 623.

(6) The complaint on its face was insufficient as a matter of law to sustain the issuance of an arrest warrant, and the arrest and subsequent prosecution of appellant was unlawful and void. As a result of the unlawful arrest of appellant, appellant was compelled to take the stand and produce evidence to rebut the presumption of guilt raised by the statute under which he was arrested. *People v. Sesslin,* 68 A.C. 431, 67 Cal.Rptr. 409; *People v. Sorensen, supra,* 68 A.C. 285, 66 Cal.Rptr. 7.

(7) The trial court erred in refusing to accept jurisdiction on appellant's Motion For Judgment Of Acquittal, which motion was made after the conclusion of the prosecution's case and again on Motion For New Trial. Penal Code section 118.1; *Saidi-Tabatabai v. Superior Court,* 253 A.C.A. 303, 61 Cal.Rptr. 510; *Robinson v. Superior Court,* 35 Cal.2d 379, 218 P.2d 10.

(8) The defendant was prejudiced in that he was not arraigned for judgment. Penal Code section 1200;

In re Levi, 39 Cal.2d 41, 244 P.2d 403; *People v. Thomas,* 45 Cal.2d 433, 290 P.2d 491.

(9) Defendant was entitled to a new trial (California Penal Code section 1202) in that the court failed to render or pronounce judgment within the time prescribed by California Penal Code section 1191. *People v. Billingsley,* 59 Cal.App.2d Supp. 845, 139 P.2d 362; *Lee v. Superior Court,* 89 Cal.App.2d 716, 201 P.2d 882; *In re Osslo,* 51 Cal.2d 371, 334 P.2d 1.

(v) California Penal Code section 270 is found in Stats. 1968, c. 235, p. ___, section 2, and reads as follows:

"A father of either a legitimate or illegitimate minor child who willfully omits without lawful excuse to furnish necessary clothing, food, shelter or medical attendance or other remedial care for his child is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment. If the father, during such violation, remains out of the state for 30 days, or if he fails or refuses to comply with the order of a court of competent jurisdiction requiring him to make any provision for the maintenance, support, medical treatment or other remedial care of such minor child and remains out of the state for 10 days without doing so, he is guilty of a felony. This statute shall not be construed so as to relieve such father from the criminal liability defined herein for such omission merely because the mother of such child is legally entitled to the custody of such child nor because the

mother of such child, or any other person, or organization, voluntarily or involuntarily furnishes such necessary food, clothing, shelter or medical attendance or other remedial care for such child, or undertakes to do so.

"Proof of abandonment or desertion of a child by such father, or the omission by such father to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his child is *prima facie* evidence that such abandonment or desertion or omission to furnish necessary food, clothing, shelter or medical attendance or other remedial care is willful and without lawful excuse.

"The court, in determining the ability of the father to support his child, shall consider all income, including social insurance benefits and gifts.

"Proof of abandonment or desertion of a child by such father or the omission by such father to furnish such food, shelter, clothing, or medical attendance or other remedial care for more than thirty (30) days is *prima facie* evidence that such father was outside the state.

"In the event that the father of either a legitimate or illegitimate minor child is dead or for any other reason whatsoever fails to furnish the necessary food, clothing, shelter or medical attendance or other remedial care for his minor child, the mother of said child shall become subject to the provisions of this section and be criminally liable for the support of said minor child during the period of failure on the part of the father to the same extent and in the same

manner as the father.

"The provisions of this section are applicable whether the parents of such child are married or divorced, and regardless of any decree made in any divorce action relative to alimony or to the support of the child. A child conceived but not yet born is to be deemed an existing person insofar as this section is concerned.

"The husband of a woman who bears a child as a result of artificial insemination shall be considered the father of that child for the purposes of this section, if he consented in writing to the artificial insemination."

(c) The questions presented on appeal are as follows:

(i) Whether California Penal Code section 270, either as applied or on its face, is unconstitutional in violation of Amendment Fourteen to the United States Constitution, in that:

(1) Said statute is so vague, indefinite, and ambiguous that men of common and ordinary intelligence must differ as to the meaning of said statute, specifically as to what is meant by the term "necessary" as applied to food, shelter and clothing, and the term "without lawful excuse" as used in combination with the requirement of "necessity"?

(2) Said statute provides that a presumption of wilfully failing to provide arises from the mere fact of failing to provide; consequently, there is no rational connection between the presumption and the facts upon which the presumption is sought to be based?

(3) That portion of said statute which provides: "The court, in determining the ability of the father to support his child, shall consider all income, including social insurance, benefits and gifts . . . " indirectly and directly violates the privilege against self-incrimination (Fifth Amendment, United States Constitution) by permitting this information to be obtained from defendant through the probation department?

(4) Said statute, by sanctioning imprisoning a man for failing to provide support for a child born out of wedlock, of whom he is alleged to be the father, constitutes cruel and unusual punishment (Eighth Amendment, United States Constitution)?

(5) Said statute does not contain the word "knowingly," *i.e.*, there is no mandatory provision for notice to the defendant that he may be violating the statute prior to arrest?

(6) Said statute provides for imprisonment for debt (which is also a violation of California Constitution, Article I, section 50)?

(ii) Whether appellant was denied the right to effective representation by counsel when the court, at the hearing on appellant's Motion For New Trial and/or Judgment Of Acquittal,inquired of appellant's counsel whether said counsel believed appellant's trial testimony?

(iii) Whether a defendant is denied the due process of law when, as in the instant case, the evidence introduced against him was insufficient as a matter of law to sustain the conviction?

(1) Whether the prosecution failed to establish two elements of the *corpus delecti* of the offense, to wit,

(a) what constituted the necessities of life under the circumstances of this case, and (b) that appellant had the ability to pay more than he did in fact pay?

(iv) Whether the complaint on its face was insufficient as a matter of law to sustain the issuance of an arrest warrant, and whether the arrest and subsequent prosecution of appellant was unlawful and void? Further, whether, as a result of the unlawful arrest of appellant, appellant was compelled to take the stand and produce evidence to rebut the presumption of guilt raised by the statute under which he was arrested?

(v) Whether the trial court erred in refusing to accept jurisdiction on appellant's Motion For Judgment Of Acquittal, which motion was made after the conclusion of the prosecution's case and again on Motion For New Trial?

(vi) Whether the defendant was prejudiced in that he was not arraigned for judgment?

(vii) Whether defendant was entitled to a new trial?

(d) Statement of the case:

An illegitimate child was born to Gloria Glover on February 1, 1962. Defendant was claimed to be the father. Gloria Glover, the mother, at all times was working with the County of Los Angels (RT 52)[2]. During the periods in question, the defendant had provided her with the sum total of $185.00 for the support of the child, and she "felt" that $60.00 a month would be a reasonable amount for the support and maintenance of the child (RT 43, 62). She could not remember any other

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2 The appeal in the Appellate Department of the Superior Court of the State of California for the County of Los Angeles was taken on a Reporter's Transcript (RT), a Settled Statement and a Supplemental Settled Statement. References in this Jurisdictional Statement are to those documents.

payments made through or by Mr. Woods (RT 61). Miss Glover's mother indicated that additional payments had been made to Miss Glover other than those disclosed by Miss Glover (RT 79). Miss Glover made no record of the amount of payments received (RT 61).

The defendant was working as a doorman and maintenance man at the "Guys and Dolls," a nightclub. He was married and had two children, but was separated from them. He made approximately $400.00 per month, most of which was given to his wife and two children for their support and maintenance; he retained approximately $20.00 to $25.00 per week for his own support and maintenance, which was not expensive since he was living with his parents. (RT 102)

Over a period of years since the date the baby was born, defendant delivered to Miss Glover between $400.00 and $500.00 a year, including the period of time in question (RT 97).

Both the defendant and the prosecuting witness Glover testified that Woods gave money to her whenever she asked for it (RT 97).

The only and first complaint made regarding the alleged "failure to provide" was to the District Attorney's office around July of 1967 (RT 61, 62). No complaint was issued until September 26, 1967 . . . . and there is no evidence that the defendant was ever informed by the District Attorney's office or anyone else of the fact of the complaint by Gloria Glover until a physical arrest was made based upon the issuance of the warrant.

Prior to trial, motions were duly made to dismiss the prosecution based upon the premise that Penal Code section 270 and its accompanying sections were unconstitutional in violation of Amendment Fourteen of the United States Constitution (RT 3).

After conviction, the defendant was ordered to report to the probation officer. He did so, but refused to make any statement except his name and address, upon advice of counsel, contending that talking to the probation officer would be a violation of the privilege against self-incrimination. Notwithstanding this objection, the defendant was subsequently ordered to return to the probation officer and "cooperate" with him (Settled Statement 3).

At the time of the hearing on the Motion For New Trial and/or Judgment Of Acquittal, the court expressed the opinion that it did not have the jurisdiction to overrule the finding of twelve jurors (Supplemental Settled Statement 2).

At the said hearing, the court expressed the opinion that it did not believe the appellant and inquired of appellant's counsel whether or not appellant's counsel believed appellant's trial testimony (Supplemental Settled Statement 3).

The court failed to arraign the appellant for the sentence subsequently imposed (Supplemental Settled Statement 2).

The Order Granting Probation that was actually entered against appellant in the Municipal Court contained the following terms and conditions: That appellant pay a fine of $500.00 or serve 100 days in the County Jail, of which $250.00 or 50 days were suspended, plus penalty assessment of $65.00; that appellant serve 180 days in the Los Angeles County Jail, of which 170 days were suspended; that appellant maintain employment; that appellant refrain from the violation of any law and obey all rules and orders of the court; and that appellant was ordered to pay to Gloria Jean Glover $50.00 per month for the support and maintenance of Dietrich Woods (the child) commencing April 10, 1968; and, further, that appellant was ordered to file a written verification monthly with the court

that the payments had been made. Execution of sentence and probation were stayed pending appeal.

The issues herein presented were first raised in the Municipal Court of the Culver City Judicial District, County of Los Angeles, State of California. The issues were raised in a Pretrial Motion to Dismiss the Complaint (on February 26, 1968) and in a Post-Trial Motion for a New Trial and/or Judgment Of Acquittal. All of these motions were denied. The issues were again raised in the Opening Brief filed by appellant in the Appellate Department of the Superior Court of the State of California for the County of Los Angeles. The Appellate Department affirmed the judgment of the court below granting probation.

(e) The federal questions presented in this appeal are substantial, in that appellant respectfully contends that California Penal Code section 270 is unconstitutional in that it permits a person to be fined and/or imprisoned for failing to support his alleged illegitimate child even though said section is vague and ambiguous and even though said section contains the unconstitutional presumption that by merely failing to provide for his minor child, it is presumed that the defendant *wilfully* failed to do so.

(f) Appended hereto are the following:

(i) Excerpt from Transcript of Docket of the Municipal Court of Culver City Judicial District, County of Los Angeles, State of California, Daladier Andrew Woods, No. M-11262—entry dated April 3, 1968 (Appendix "A").

(ii) Judgment rendered by the Appellate Department of the Superior Court of the State of California for the County

of Los Angeles affirming the Order Granting Probation entered by the Municipal Court of the Culver City Judicial District, County of Los Angeles, State of California (Appendix "B").

(iii) Order Staying Issuance of the Remittitur and Judgment (Appendix "C").

(iv) Order Extending Stay of Issuance of Remittitur and Judgment (Appendix "D").

Respectfully submitted,

BURTON MARKS, ESQ.

Attorney for Defendant and Appellant.

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APPENDIX "A"

EXCERPT FROM TRANSCRIPT OF DOCKET

In the Municipal Court of Culver City Judicial District, County of Los Angeles, State of California.

(Criminal) No. M-11262.

THE PEOPLE OF THE STATE OF CALIFORNIA vs. DALADIER ANDREW WOODS.

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3 Apr 68 HON. FRANK W. TROOST, JUDGE PRESIDING: Defendant in court with counsel, Burton Marks. People represented by Deputy District Attorney, Terence Moloney. Motion for new trial denied and motion for judgment of acquittal denied. Formal probation denied. Time waived for sentence. Imposition of sentence suspended, defendant placed on summary probation for three (3) years on the following terms and conditions:

1. Pay a fine of $500.00 + Penalty Assessment or spend 100 days, Los Angeles County Jail; $250.00 or 50 days suspended.
2. 180 days, Los Angeles County Jail; 170 days suspended, balance of ten (10) days forthwith.
3. Pay for support and maintenance of Dietrich Woods the sum of $50.00 per month directly to Gloria Jean Glover beginning April 10, 1968 and file verification monthly. (Dietrich Woods defendant's minor child by Gloria Glover)
4. No further violations of law; obey rules and orders of court.

5. Diligently maintain employment.

APPENDIX "B"

JUDGMENT OF APPELLATE DEPARTMENT

Appellate Department of the Superior Court of the State of California for the County of Los Angeles.

Superior Court No. CR A 7977.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. DALADIER ANDREW WOODS, Defendant and Appellant.

IT IS ORDERED AND ADJUDGED that the order granting probation made and entered in the Municipal Court of Culver Judicial District, County of Los Angeles, State of California, in the above-entitled cause be and the same is hereby affirmed.

DATED November 25, 1968.

BY THE COURT

Vasey, Presiding Judge

Wong, Judge

Smith, Judge

APPENDIX "C"

ORDER STAYING ISSUANCE OF REMITTITUR AND JUDGMENT

Appellate Department of the Superior Court of the State of California for the County of Los Angeles.

Superior Court No. CR A 7977.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. DALADIER ANDREW WOODS, Defendant and Appellant.

Upon notice of the intention of the appellant that he by his counsel intends to appeal to the Supreme Court of the United States from the judgment of this court, made and entered on the 25th day of November, 1968,

IT IS HEREBY ORDERED that issuance of the remittitur of this court, and the order and judgment of this court in the above-entitled case, be, and the same are, hereby stayed for a period of 30 days from date hereof, unless the court orders otherwise.

DATED December 11, 1968.

BY THE COURT

Whyte, Presiding Judge

Vasey, Judge

Wong, Judge

APPENDIX "D"

ORDER EXTENDING STAY OF ISSUANCE OF REMITTITUR AND JUDGMENT

Appellate Department of the Superior Court of the State of California for the County of Los Angeles.

Superior Court No. CR A 7977.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. DALADIER ANDREW WOODS, Defendant and Appellant.

Pursuant to foregoing prior order staying issuance of remittitur is extended for a period of ten (10) days from date of expiration of prior formal order.

January 8, 1969.

Whyte, Presiding Judge

Vasey, Judge

Wong, Judge

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss
County of Los Angeles)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 215 West Fifth Street, Los Angeles, California 90013; that on JANUARY , 1969, I served the within JURISDICTIONAL STATEMENT (People v. Woods) on the following named parties by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Los Angeles, California, addressed to said parties at the addresses as follows:

COUNTY CLERK, COUNTY OF LOS ANGELES
111 NORTH HILL STREET
LOS ANGELES, CALIFORNIA 90012
FOR: APPELLATE DEPARTMENT

ATTORNEY GENERAL, STATE OF CALIFORNIA
600 STATE BUILDING
LOS ANGELES, CALIFORNIA 90012

DISTRICT ATTORNEY, COUNTY OF LOS ANGELES
600 HALL OF JUSTICE
LOS ANGELES, CALIFORNIA 90012

I swear under penalty of perjury that the foregoing is true and correct.

Executed on JANUARY , 1969, at LOS ANGELES, CALIFORNIA.

D. A. Standefer

Subscribed and sworn to before me
this day of , 1969.

Notary Public in and for the
State of California.

Orig. + 40 cys. via REA
to Clerk, Supreme Court
of the United States,
Washington, D. C.